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May 25, 2011

VIA U.S. MAIL

Ms. Barbara Peterson, Esq.
United States Environmental Protection Agency
Region 7
901 North Fifth Street
Mail Code: CNSLSPFD
Kansas City, KS 66101

RE: Wilson Road Development Corp., et al. v. Fronabarger Concreters, Inc., et al. (E.D. Mo.)
Case: 1:11-cv-00084-LMB (filed 05/11/2011)

Dear Barbara:

Enclosed, please find a courtesy copy of the Complaint filed by the Dumeys in connection with the above-referenced matter, along with a courtesy copy of the notice that was sent to the Attorney General and EPA Administrator pursuant to 42 U.S.C. § 9613(I). Per the enclosed, please note that CERCLA claims are presently alleged only against private parties, and are presently not alleged against the EPA or any federal or state agency.

If you have any questions or if you wish to discuss further, then please do not hesitate to contact me.

Sincerely,

Leah J. Knowlton

Enclosures



COPY



ATTORNEYS AT LAW

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May 23, 2011

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW.
Washington, DC 20460

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: Notice of CERCLA Claims
Wilson Road Development Corp., et al. v. Fronabarger Concreters, Inc., et al. (E.D. Mo.)
Case: 1:11-cv-00084-LMB (filed 05/11/2011)

Dear Ms. Jackson and Mr. Holder:

In connection with the above-referenced lawsuit, this Firm represents Wilson Road Development Corporation, Daniel E. Dumey, Individually and as Trustee of the Daniel E. Dumey Revocable Living Trust, and Brenda K. Dumey, Individually and as Trustee of the Brenda K. Dumey Revocable Living Trust (hereinafter, collectively, "Plaintiffs"). Plaintiffs' Complaint was filed in the Eastern District of Missouri on May 11, 2011, and a copy of the filed Complaint is enclosed herein for your records.

This letter and its enclosures constitute notice of Plaintiffs' claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.* Such notice is being provided pursuant to 42 U.S.C. § 9613(I), which provides as follows:

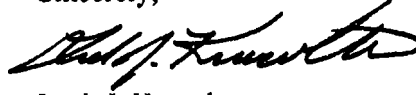
"Whenever any action is brought under this chapter in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency."

Id. Per the enclosed, please note that CERCLA claims are presently alleged only against private parties, and are presently not alleged against the EPA or any federal or state agency. Specifically, Plaintiffs' Complaint alleges one or more CERCLA claims against the following Defendants: Fronabarger Concreters, Inc; Union Electric Company d/b/a Ameren Missouri; Citizens Electric Corporation; Charles J. Morrill and Alan Morrill d/b/a Morrill Development Company; and Morrill Development, LLC. These claims are related to contamination from the Missouri Electric Works Superfund Site in Cape Girardeau, Missouri, which is adversely affecting Plaintiffs' nearby Property.

Honorable Lisa P. Jackson
Honorable Eric H. Holder, Jr.
May 23, 2011
Page 2

If you have any questions regarding this notice, or if you wish to discuss this matter, please call me at (404) 962-6455.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah J. Knowlton", written in a cursive style.

Leah J. Knowlton

Enclosure

cc: Daniel E. Dumey and Brenda K. Dumey

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

WILSON ROAD DEVELOPMENT)
CORPORATION; DANIEL E. DUMEY,)
INDIVIDUALLY AND AS TRUSTEE OF)
THE DANIEL E. DUMEY REVOCABLE)
LIVING TRUST; AND BRENDA K.)
DUMEY, INDIVIDUALLY AND AS)
TRUSTEE OF THE BRENDA K. DUMEY)
REVOCABLE LIVING TRUST)

Plaintiffs,)

-vs-)

FRONABARGER CONCRETTERS, INC;)
UNION ELECTRIC COMPANY d/b/a)
AMEREN MISSOURI; CITIZENS)
ELECTRIC CORPORATION; CHARLES J.)
MORRILL AND ALAN MORRILL d/b/a)
MORRILL DEVELOPMENT COMPANY;)
MORRILL DEVELOPMENT, LLC;)

Defendants.)

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs bring this action to recover response costs and damages, and for equitable relief pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, as amended, and the laws of the State of Missouri. Plaintiffs' property located downhill from the Missouri Electric Works Superfund Site in Cape Girardeau, Missouri has been contaminated by hazardous chemicals emanating from the Site and from property owned by Morrill Development Company. Plaintiffs seek compensation for costs incurred in investigating contamination; damages from their inability to develop, sell, or otherwise fully utilize the property; a declaration of their rights; and injunctive relief requiring defendants to cease discharging hazardous chemicals on, under and across Plaintiffs' property.

PARTIES

1. Plaintiff Wilson Road Development Corporation ("WRDC") is a corporation incorporated under the laws of the State of Missouri with its principal place of business located at 26093 U.S. Highway 61, Benton Missouri 63736. WRDC is engaged in the business of developing commercial and residential property, and at all relevant times has done business in the State of Missouri.

2. Plaintiff Daniel E. Dumey, individually and as Trustee of the Daniel E. Dumey Revocable Living Trust, is an individual residing in Benton, Missouri. Plaintiff Daniel E. Dumey, individually, during certain relevant time periods was an owner of approximately 43.5 acres of land located at Wilson Road and South Kingshighway in Cape Girardeau, Missouri ("Plaintiffs' Property" or "the Property"). Plaintiff Daniel E. Dumey, as Trustee, is a current owner of Plaintiffs' Property. A map of the Property and adjacent properties is attached as Exhibit 1.

3. Plaintiff Brenda K. Dumey, individually and as Trustee of the Brenda K. Dumey Revocable Living Trust, is an individual residing in Benton, Missouri. Plaintiff Brenda K. Dumey, individually, was an owner of Plaintiffs' Property during certain relevant time periods. Plaintiff Brenda K. Dumey, as Trustee, is a current owner of Plaintiffs' Property.

4. Defendant Fronabarger Concreters, Inc. ("Defendant Fronabarger") is a Missouri corporation with its principal place of business at 3290 State Highway East, Oak Ridge, Missouri. Glenn W. Fronabarger is the registered agent, located at 3290 State Highway E., Oak Ridge, Missouri 63769. Defendant Fronabarger owns property at 824 South Kingshighway, Cape Girardeau, Missouri, 63703, which property is known as the Missouri Electric Works Superfund Site ("MEW Site").

5. Defendant Morrill Development Company is a registered fictitious company owned by Charles J. Morrill and Alan Morrill located at 840 S. Kingshighway, Cape Girardeau, Missouri, 63703. Upon information and belief, Morrill Development Company owns or has owned property located at 840 S. Kingshighway Street, Cape Girardeau, Missouri, 63703 (the "Morrill Development Company Property"). Defendant Morrill Development Company can be served through its owners Charles J. Morrill or Alan Morrill at 840 S. Kingshighway, Cape Girardeau, Missouri, 63703. Defendant Morrill Development Company and its owners are hereinafter collectively referred to as "Morrill Development Company."

6. Defendant Charles J. Morrill is an individual operating under the registered fictitious name Morrill Development Company, which is located at 840 S. Kingshighway, Cape Girardeau, Missouri, 63703. Upon information and belief, Charles J. Morrill d/b/a Morrill Development Company owns the Morrill Development Company Property. Defendant Charles J. Morrill d/b/a Morrill Development Company can be served at 840 S. Kingshighway, Cape Girardeau, Missouri, 63703.

7. Defendant Alan Morrill is an individual operating under the registered fictitious name Morrill Development Company, which is located at 840 S. Kingshighway Street, Cape Girardeau, Missouri, 63703. Upon information and belief, Alan Morrill d/b/a Morrill Development Company owns the Morrill Development Company Property. Defendant Alan Morrill d/b/a Morrill Development Company can be served at 840 S. Kingshighway, Cape Girardeau, Missouri, 63703.

8. Defendant Morrill Development, LLC is a Missouri limited liability company. Morrill Development, LLC can be served through its registered agent John A. Layton located at 351 S. Silver Springs, Ste 412, Cape Girardeau, Missouri, 63702. Upon information and belief,

Morrill Development, LLC owned the MEW Site, located at 824 S. Kingshighway Street, Cape Girardeau, Missouri, 63703, prior to transferring the MEW Site property to Fronabarger.

9. Defendant Union Electric Company is a Missouri company with its principal place of business at One Ameren Plaza, 1901 Chouteau Ave., St. Louis, Missouri 63103 and can be served through its registered agent Kenneth L. Schmidt at 500 East Independence Drive, Union, Missouri 63084. Upon information and belief, Defendant Union Electric Company is operating under the registered fictitious name "Ameren Missouri."

10. Defendant Citizens Electric Corporation is a Missouri Corporation with its principal place of business located at 150 Merchant Street, Ste. Genevieve, Missouri 63670. Defendant Citizens Electric Corporation can be served through its registered agent Van Robinson located at 150 Merchant Street, Ste. Genevieve, Missouri 63670.

11. Defendants Fronabarger Concreters, Morrill Development Company, Charles J. Morrill, Alan Morrill, Union Electric, and Citizens Electric are collectively referred to herein as "Defendants."

JURISDICTION AND VENUE

12. This case arises under the laws of the United States, and therefore, jurisdiction is conferred upon the Court by 42 U.S.C. § 9613(b) and 28 U.S.C. § 1331.

13. Venue is proper in the Eastern District of Missouri pursuant to 42 U.S.C. § 9613(b) because the release and damage occurred and are occurring in this judicial district, and the Defendants have principal offices in this district. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b) because the events, release, and damage giving rise to the claim occurred and are occurring in this district, and the Property that is the subject of the action is situated in this district. Furthermore, divisional venue is appropriate in the Southeastern Division

as Cape Girardeau County is in that Division and the claims for relief in this Complaint arose in Cape Girardeau County.

14. This Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367(a) because those claims are so related to Plaintiffs' federal claims that they form part of the same case or controversy.

15. Upon filing this Complaint, Plaintiffs provided a copy of this Complaint to the Attorney General of the United States and to the Administrator of the EPA pursuant to 42 U.S.C. § 9613(l).

JURY TRIAL DEMANDED

16. For Counts I and II of this Complaint, Plaintiffs request a Declaratory Judgment by the Court. For each of the remaining Counts in this Complaint, Plaintiffs demand a jury trial regarding each of the issues, to the extent allowed by law.

ALLEGATIONS COMMON TO ALL COUNTS

OWNERSHIP OF PROPERTY

17. A map of the Plaintiffs' Property and adjacent properties, including the MEW Site, is attached hereto as Exhibit 1.

18. Missouri Electric Works, Inc., a dissolved Missouri corporation, formerly owned approximately 6.4 acres of land referred to herein as the MEW Site. The MEW Site is uphill and upgradient from Plaintiffs' Property.

19. Morrill Development, LLC acquired the MEW Site by Sheriff's Deed on March 27, 2008.

20. Fronabarger Concreters acquired the MEW Site from Morrill Development, LLC on November 12, 2009, by General Warranty Deed.

21. Morrill Development Company owns and has owned the Morrill Development Company Property, located at 840 S. Kingshighway, Cape Girardeau, Missouri, 63703, at all times relevant to this Complaint.

22. Plaintiff Brenda Kay Dumey acquired Plaintiffs' Property on March 17, 1989 by General Warranty Deed.

23. Plaintiff Daniel E. Dumey and Plaintiff Brenda Kay Dumey are husband and wife.

24. Plaintiffs the Daniel E. Dumey Revocable Living Trust and the Brenda Kay Dumey Revocable Living Trust ("Trusts") acquired the Property on March 24, 2009, from Brenda Kay Dumey and Danny E. Dumey by General Warranty Deed.

EPA ESTABLISHMENT OF THE MISSOURI ELECTRIC WORKS SUPERFUND SITE

25. Missouri Electric Works and prior and subsequent owners of the MEW Site used, handled, treated, stored and/or disposed of hazardous substances, chemicals and electrical equipment containing polychlorinated biphenyls ("PCBs") on the MEW Site and upgradient of Plaintiffs' Property.

26. The United States Environmental Protection Agency ("EPA") investigated chemical contamination on the MEW Site, and listed the MEW Site as the Missouri Electric Works Superfund Site on the National Priorities List in 1990.

27. EPA found the soil and groundwater of the MEW Site to be contaminated by hazardous substances, including, Trichloroethylene, PCBs, and a specific type of PCBs called "Aroclor 1260."

28. In June 1987, the EPA notified Union Electric, Citizens Electric, and other parties that they were potentially responsible parties ("PRPs") for the contamination existing on the MEW Site.

29. The majority of PRPs, including Union Electric and Citizens Electric, associated with the MEW Site entered into a Consent Decree with EPA, which was entered in 1994 by the Federal District Court for the Eastern District of Missouri, Southeastern Division. All PRPs associated with the MEW Site are referred to as "MEW PRPs."

30. Neither WRDC, the Trusts, Daniel E. Dumey, nor Brenda K. Dumey are Potentially Responsible Parties of the MEW Site.

REMEDATION AND ONGOING CONTAMINATION

31. The MEW PRPs performed environmental remediation of soil on the MEW Site, until about July 2000, but did not remediate soil on Plaintiffs' Property.

32. Contaminated soil and groundwater continues to exist on the MEW Site.

33. Defendants Union Electric and Citizens Electric arranged for the servicing, repair and/or disposal of equipment containing PCBs and other hazardous substances, and the disposal of hazardous materials at the MEW Site.

34. It was foreseeable to Union Electric and Citizens Electric that PCBs and other hazardous substances could be released from their disposed waste and electrical equipment, and contaminate neighboring properties, including Plaintiffs' Property.

35. It was foreseeable to Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC that PCBs and other hazardous substances could be released from their properties and move downhill onto neighboring properties, including Plaintiffs' Property.

36. The MEW PRPs investigated groundwater contamination from the MEW Site as early as 2001. Chemical contamination in groundwater includes PCBs and chlorobenzenes in bedrock groundwater, and trichloroethylene in the alluvium in wetlands.

37. With respect to Plaintiffs' Property, the groundwater investigation performed by the MEW PRPs was limited in geographic scope and failed to delineate the nature and extent of contamination.

38. Despite knowledge of groundwater contamination emanating from the MEW Site, including groundwater contamination under Plaintiffs' Property, neither the MEW PRPs nor any of the Defendants have remediated the groundwater.

39. In 2007, the MEW PRPs erected a fence around a pond on Plaintiffs' Property because chemical contamination was discovered in fish in the pond.

40. Nonetheless, in the many years in which the responsible parties have been investigating the MEW Site, the MEW PRPs, including Union Electric and Citizens Electric, have failed and refused to fully investigate and clean up Plaintiffs' Property, including the soil, groundwater, and wetlands.

41. Plaintiffs have cooperated with EPA and the MEW PRPs, and repeatedly requested that the MEW PRPs' investigate and remediate Plaintiffs' Property.

42. The MEW PRPs and the Defendants have failed and refused to cease the continuing migration of chemical contamination and hazardous substances onto Plaintiffs' Property.

43. As recently as 2010, Defendant Fronabarger Concreters, the current owner of the MEW Site, conducted land disturbing and grading operations on the MEW Site, causing and exacerbating contamination and the threat of contamination on and around Plaintiffs' Property. A photograph of land disturbing activities on the MEW Site, taken by Mr. Daniel Dumey on December 6, 2010, is attached as Exhibit 2.

44. In an effort to ensure public safety, Plaintiff WRDC hired consultants to investigate soil contamination in streams on the Property. As a result, WRDC has incurred investigatory and other costs associated with the contamination caused by the Defendants.

45. Plaintiff WRDC has incurred, and will continue to incur, necessary response costs arising from the release and threatened release of hazardous substances on Plaintiffs' Property, and these costs are reasonable and consistent with the National Contingency Plan.

46. Testing performed by Plaintiffs' consultants confirmed chemical contamination in soil and sediment on the Property, which emanated from the MEW Site, including trichloroethylene and a type of PCBs called "Aroclor 1260," which are contaminants also found on the MEW Site.

47. Defendants' acts and omissions, including the ownership and operation of Defendants' properties and/or the arrangement for disposal of hazardous chemicals at the MEW Site, have caused Plaintiffs' injury, damages and harm, including without limitation: (i) costs of investigating contamination on Plaintiffs' Property; (ii) diminution in value of Plaintiffs' Property; (iii) loss of potential sales of the Property; (iv) damages for annoyance and inconvenience; and (v) attorneys' fees, expenses and costs of investigation and litigation.

COUNT I

Declaration of Liability Under CERCLA Section 107(a) for Past and Future Response Costs Against Defendants Union Electric and Citizens Electric

48. Plaintiffs incorporate paragraphs 1 - 47 as if fully set forth herein.

49. Pursuant to 28 U.S.C. § 2201, this Court may declare the rights and other legal relations of any interested parties seeking declaratory relief whether or not such relief is or could be sought.

50. Plaintiffs are not potentially responsible parties pursuant to 42 U.S.C. § 9607(a).

51. All Defendants are “persons” within the meaning of 42 U.S.C. § 9601(21), because they are corporations, commercial entities, individuals, and/or partnerships.

52. The MEW Site is a “facility” within the meaning of 42 U.S.C. § 9601(9), because it is a site where hazardous substances have been deposited, stored, disposed of, and/or placed.

53. The Morrill Development Company Property is a “facility” within the meaning of 42 U.S.C. § 9601(9), because it is a site where hazardous substances have been deposited, placed and/or come to be located.

54. Contaminants on the Plaintiffs’ Property, including but not limited to PCBs, Trichloroethylene, and benzene, are “hazardous substances” as defined in 42 U.S.C. § 9601(14).

55. A “release” or “threatened release,” within the meaning of 42 U.S.C. § 9601(22) and § 9607(a), of hazardous substances has occurred at the MEW Site and the at Morrill Development Company Property and continues to occur and migrate onto Plaintiffs’ Property.

56. The “release” or “threatened release” of hazardous substances from the MEW Site and the Morrill Development Company Property has caused and will continue to cause Plaintiffs to incur necessary response costs, including costs of investigation, pursuant to 42 U.S.C. § 9607(a). Said response costs are and will continue to be consistent with the National Contingency Plan (“NCP”) and recoverable under CERCLA.

57. Defendant Union Electric Company is an “arranger” pursuant to 42 U.S.C. § 9607(a)(3), as such Defendant has, by contract, agreement, or otherwise, arranged for the disposal or treatment of hazardous substances at the MEW Superfund Site, which substances migrated both onto the Morrill Development Company Property and in, on, under, and around Plaintiffs’ Property.

58. Defendant Citizens Electric Company is an "arranger" pursuant to 42 U.S.C. § 9607(a)(3), as such Defendant has, by contract, agreement, or otherwise, arranged for the disposal or treatment of hazardous substances at the MEW Superfund Site, which substances migrated both onto the Morrill Development Company Property and in, on, under, and around Plaintiffs' Property.

59. Plaintiffs have incurred, and will continue to incur, necessary response costs to respond to the release and threatened release of hazardous substances, and these costs are reasonable and consistent with the National Contingency Plan. Necessary response costs to date include, but are not limited to, investigative costs, technical consultants' fees, and attorneys' fees and costs. Said response costs are and will continue to be consistent with the NCP and recoverable under CERCLA.

60. Union Electric and Citizens Electric are jointly and severally and strictly liable to the Plaintiffs pursuant to 42 U.S.C. 9607(a) for all past and future response costs, including without limitation, prejudgment interest, incurred or to be incurred by WRDC in connection with the release and threatened release of hazardous substances at and from the MEW Site and the Morrill Development Company Property.

61. Pursuant to 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the Defendants, including but not limited to Union Electric and Citizens Electric, are liable under 42 U.S.C. § 9607, and that the Defendants are liable and responsible for any and all environmental remedial action costs and response costs, which have been or may be incurred in the future, including prejudgment interest.

62. In addition, Plaintiffs are entitled to a declaration under 42 U.S.C. § 9613(g)(2) that is binding as to any subsequent action. Such judgment shall declare that the Defendants

Union Electric and Citizens Electric are liable to Plaintiffs for any and all costs, damages and liability that Plaintiffs may incur as a result of releases or threatened releases of hazardous substances at and from the MEW Site and Morrill Development Company Property.

COUNT II

Declaration of Liability Under CERCLA Section 107(a) for Past and Future Response Costs Against Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC

63. Plaintiffs incorporate paragraphs 1 - 62 as if fully set forth herein.

64. Pursuant to 28 U.S.C. § 2201, this Court may declare the rights and other legal relations of any interested parties seeking declaratory relief whether or not such relief is or could be sought.

65. Defendant Fronabarger Concreters, Inc. is the current “owner and/or operator” of the MEW Site, as defined by 42 U.S.C. § 9601(20), and such Defendant is a liable party under 42 U.S.C. § 9607(a).

66. Defendants Charles J. Morrill and Alan Morrill, upon information and belief, operating in partnership under the fictitious name “Morrill Development Company,” are the “owners and/or operators” of a “facility” (the Morrill Development Company Property), as such terms are defined by 42 U.S.C. § 9601(20) and § 9601(9), respectively; and such Defendants are liable parties under 42 U.S.C. § 9607(a).

67. Defendant Morrill Development, LLC, owned the MEW Site from March 27, 2008 through November 12, 2009. During this time of ownership, upon information and belief, hazardous substances were disposed of at the MEW Site. Accordingly, Morrill Development, LLC is liable under 42 U.S.C. § 9607(a) because it was a “person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances

were disposed of” as such terms are defined by 42 U.S.C. § 9601(20) and § 9601(9), respectively; and such Defendants are liable parties under 42 U.S.C. § 9607(a).

68. A “release” or “threatened release” of hazardous substances within the meaning of 42 U.S.C. § 9601(22) and § 9607(a), has occurred at the MEW Site and the Morrill Development Company Property and continues to occur and migrate onto Plaintiffs’ Property.

69. Plaintiffs have incurred, and will continue to incur, necessary response costs to respond to the release and threatened release of hazardous substances, and these costs are reasonable and consistent with the National Contingency Plan.

70. Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC are jointly and severally and strictly liable to the Plaintiffs pursuant to 42 U.S.C. 9607(a) for all past and future response costs, including prejudgment interest, that have been and will be incurred by Plaintiffs in connection with the contamination emanating from the MEW Site and the Morrill Development Company Property onto Plaintiffs’ Property.

71. Pursuant to 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the Defendants Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC are liable under 42 U.S.C. § 9607 and that the Defendants are liable and responsible for all response costs, which have been and will be incurred in the future, including prejudgment interest.

72. In addition, Plaintiffs are entitled to a declaration under 42 U.S.C. § 9613(g)(2) that is binding as to any subsequent action. Such judgment shall declare that Defendant Fronabarger Concreters and the Morrill Development Company and Morrill Development, LLC are liable to Plaintiffs for any and all costs, damages and liability that Plaintiffs may incur as a

result of releases or threatened releases of hazardous substances at and from the MEW Site and Morrill Development Company Property onto Plaintiffs' Property.

COUNT III

CERCLA Section 107 Cost Recovery Against Union Electric and Citizens Electric

73. Plaintiffs incorporate paragraphs 1 - 72 as if fully set forth herein.

74. Plaintiffs have incurred and will continue to incur necessary response costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a result of the release and threatened release of hazardous substances at and from the MEW Site and the Morrill Development Property onto Plaintiffs' Property.

75. Response costs include, but are not limited to, investigative costs, technical consultants' fees, and reasonable attorneys' fees and costs. Said response costs are and will continue to be consistent with the NCP and recoverable under CERCLA.

76. Defendants Union Electric and Citizens Electric are responsible parties, and are jointly and severally and strictly liable, pursuant to 42 U.S.C. § 9607(a), for all past and future response costs that have been and will be incurred by Plaintiffs in connection with the release and threatened release of hazardous substances at and from the MEW Site and the Morrill Development Property onto Plaintiffs' Property.

COUNT IV

CERCLA Section 107 Cost Recovery Against Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC

77. Plaintiffs incorporate paragraphs 1 - 76 as if fully set forth herein.

78. Plaintiffs have incurred and will continue to incur necessary response costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a result of the release and

threatened release of hazardous substances at and from the MEW Site and the Morrill Development Company Property onto Plaintiffs' Property.

79. Response costs include, but are not limited to, investigative costs, technical consultants' fees, and reasonable attorneys' fees and costs. Said response costs are and will continue to be consistent with the NCP and recoverable under CERCLA.

80. Defendants Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC are responsible parties, and are jointly and severally and strictly liable to the Plaintiffs pursuant to 42 U.S.C. § 9607(a) for all past and future response costs, including prejudgment interest, that have been and will be incurred by Plaintiffs in connection with the release and threatened release of hazardous substances at and from the MEW Site and the Morrill Development Company Property onto Plaintiffs' Property.

COUNT V

Continuing Nuisance Against All Defendants

81. Plaintiffs incorporate paragraphs 1 - 80 as if fully set forth herein.

82. Plaintiffs are entitled to full use and enjoyment of their Property, free from unreasonable interference by Defendants.

83. Defendant Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC have caused a continuing nuisance on Plaintiffs' Property by their acts and omissions on their properties, including their failures to employ best management practices to control erosion and stormwater runoff during land disturbing activities, and their failures to mitigate the migration of hazardous substances and contaminants into the soil, groundwater, surface water, and wetland area in, on, and around Plaintiffs' Property.

84. Defendants Union Electric and Citizens Electric have caused a continuing nuisance on Plaintiffs' Property through their arrangements for disposal of hazardous materials

on the MEW Site, and their continuing failures and refusals to mitigate the migration of hazardous substances and contaminants into the soil, groundwater, surface water, and wetland area in, on, and around Plaintiffs' Property.

85. As a proximate and direct result of this nuisance, Defendants have caused substantial, unnatural, and unreasonable interference with Plaintiffs' use and enjoyment of the Property, and annoyance and inconvenience to Plaintiffs.

86. Plaintiffs never consented to, permitted, or authorized Defendants' interference with Plaintiffs' use and enjoyment of the Property.

87. The creation and maintenance of the nuisance has caused and will continue to cause Plaintiffs to incur injury and damages, including without limitation: (i) contamination on the Property; (ii) costs incurred investigating the contamination; (iii) damages from Plaintiffs' inability to develop, sell, or otherwise fully utilize the property; (iv) damages for annoyance and inconvenience; and (v) attorneys' fees, expenses and costs of litigation.;

88. Each day this nuisance continues presents a repetition of the original wrong and a new continuing wrong.

89. Plaintiffs are entitled to injunctive relief directing Defendants to abate the nuisance and restore the Property to its former condition.

COUNT VI

Continuing Trespass Against All Defendants

90. Plaintiffs incorporate paragraphs 1 - 89 as if fully set forth herein.

91. Defendant Fronabarger Concreters and the Morrill Development Company and Morrill Development, LLC, have caused a continuing trespass on Plaintiffs' Property by and through their acts and omissions on their properties, including their failures to employ best management practices to control erosion and stormwater runoff during land disturbing activities,

and their failures to mitigate the migration of hazardous substances and contaminants into the soil, groundwater, surface water, and wetland area in, on, and around Plaintiffs' Property.

92. Defendants Union Electric and Citizens Electric have caused a continuing trespass on Plaintiffs' Property through their arrangements for disposal of hazardous materials on the MEW Site, and their continuing failures and refusals to mitigate the migration of hazardous substances and contaminants into the soil, groundwater, surface water, and wetland area in, on, and around Plaintiffs' Property.

93. The continuing entry and presence of contaminants on Plaintiffs' Property is unlawful, without consent or authorization of Plaintiffs, and constitutes a trespass.

94. This trespass has caused and will continue to cause Plaintiffs to incur injury and damages, including without limitation: (i) contamination on the Property; (ii) costs incurred investigating the contamination; (iii) damages from Plaintiffs' inability to develop, sell, or otherwise fully utilize the property; and (v) attorneys' fees, expenses and costs of litigation.

95. Each day this trespass continues presents a repetition of the original wrong and a new continuing wrong.

96. Plaintiffs are entitled to injunctive relief directing Defendants to cease the trespass and to remove the contamination from Plaintiffs' Property.

COUNT VII

Negligence Against All Defendants

97. Plaintiffs incorporate paragraphs 1 - 96 as if fully set forth herein.

98. Defendants Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC had a duty to exercise reasonable care in their ownership and operations of the MEW Site and the Morrill Development Company Property, and a duty to

control hazardous substances on their properties so they would not migrate into the soil, groundwater or surface water of downgradient properties, including Plaintiffs' Property.

99. Union Electric and Citizens Electric had a duty to exercise reasonable care to ensure that hazardous substances they generated were properly handled, stored and disposed of on the MEW Site and would not migrate into the soil, groundwater or surface water of downgradient properties, including Plaintiffs' Property.

100. All Defendants had a continuing duty to take adequate precautions to mitigate damages to Plaintiffs' Property caused by the migration of hazardous substances.

101. Plaintiffs are attempting to mitigate the damage to Plaintiffs' Property by investigating and remediating contamination before contamination spreads further onto the Property and onto properties downgradient of the Property.

102. Defendants have breached the duty each owes to Plaintiffs by failing or refusing to use reasonable care to prevent the past and continuing discharge, disposal, seepage, and migration of hazardous substances from the MEW Site and the Morrill Development Company Property onto and under Plaintiffs' Property.

103. Defendants have breached the duty each owes to Plaintiffs by failing or refusing to take timely and sufficient corrective measures to remediate contaminated groundwater, soil, surface water and wetlands on Plaintiffs' Property.

104. The damages and losses sustained by Plaintiffs are a foreseeable consequence of Defendants' negligence.

105. As a direct and proximate result of Defendants' negligent conduct, Plaintiffs' Property has been injured, and Plaintiffs have suffered continuing damages.

COUNT VIII

Strict Liability Against All Defendants

106. Plaintiffs incorporate paragraphs 1 - 105 as if fully set forth herein.

107. The arrangements for disposal of, and arrangements for work on equipment containing hazardous substances by Defendants Union Electric and Citizens Electric at the Missouri Electric Works Site were abnormally dangerous activities.

108. The operation of properties known to contain hazardous substances, and reckless land disturbing activities on their properties by Defendants Fronabarger Concreters and Morrill Development Company and Morrill Development, LLC were abnormally dangerous activities.

109. All Defendants knew, or should have known, that such generation, storage, and disposal of hazardous substances on the MEW Site and Morrill Development Company Property constituted abnormally dangerous activities.

110. These abnormally dangerous activities have caused and continue to expose Plaintiffs, Plaintiffs' Property, and other neighbors to a high degree of risk of harm.

111. As a result of the abnormally dangerous activities of Defendants, Plaintiffs' Property has been and continues to be contaminated with hazardous substances.

112. Defendants are strictly liable under common law for all direct and consequential damages resulting from their conduct in carrying on these abnormally dangerous activities, including, without limitation, all costs necessary to restore Plaintiffs' Property to its former condition, as well as damages for the loss of use of the Property and any diminution in value of the Property after restoration.

PRAYER FOR RELIEF – ALL COUNTS

WHEREFORE, Plaintiffs respectfully pray that the Court enter judgment in their favor and against Defendants as follows:

- (a) Declaring that Defendants are jointly and severally liable for all past and future response costs associated with Plaintiffs' Property, which costs are necessary and consistent with the NCP, together with pre- and post- judgment interest upon such costs, and other compensable costs, including attorneys' fees and environmental consultant fees;
- (b) Declaring that Plaintiffs are not liable under Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607 (b)(3) for contamination of Plaintiffs' Property or the property of others by hazardous substances released from the MEW Site or the Morrill Development Company Property to the environment;
- (c) Awarding response costs incurred by Plaintiffs in connection with the releases of hazardous substances from the MEW Site and the Morrill Development Company Property, which costs are necessary and consistent with the NCP, together with pre- and post- judgment interest upon such costs and other compensable costs, including attorneys fees' and environmental consultant fees;
- (d) Requiring Defendants to immediately undertake actions to stop the migration, leaching, runoff, and other movement of hazardous substances and contaminant-laden erosion onto Plaintiffs' Property;
- (e) Requiring Defendants to immediately undertake action to clean up and eliminate the hazardous substances and contamination on Plaintiffs' Property, to clean up and eliminate the source of such contamination on the MEW Site and the Morrill Development Company Property, and to restore Plaintiffs' Property to its former condition;

- (f) Requiring Defendants to indemnify and hold Plaintiffs harmless from all claims, demands, costs, or judgments against any of them by any party, arising out of or related to the contamination of Plaintiffs' Property;
- (g) Awarding to Plaintiffs damages arising under State law claims, including, (i) costs incurred investigating contamination; (ii) diminution in value of Plaintiffs' Property; (iii) damages from Plaintiffs' inability to develop, sell, or otherwise fully utilize the property; (iv) damages for individual Plaintiffs' loss of business and time spent addressing Defendants' tortious acts, and for annoyance and inconvenience;
- (h) Awarding to Plaintiffs the costs of litigation, including reasonable attorneys' and expert witness fees; and
- (i) Granting to Plaintiffs such other and further relief that this Court deems just and proper.

This 11th day of May, 2011.

Respectfully submitted,

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EXHIBIT 1



S&ME

SITE MAP

WILSON ROAD PROPERTY
MISSOURI TOWN OF 201100007001000000
CAPE GIRARDEAU, CAPE GIRARDEAU COUNTY, MISSOURI
FILE NAME: 1684-10-189A DRAWN BY: PB CWD BY:
JOB NO: 1684-10-189A DATE: 5-06-11 FIGURE NO: 1

EXHIBIT 2
Land Disturbing Activity on Fronabarger Concreters Property
(former Missouri Electric Works Property)



Photograph taken by Dan Dumey on December 6, 2010